

## **PURCHASE AND SALE AND ESCROW INSTRUCTIONS AGREEMENT**

This Purchase and Sale and Escrow Instructions Agreement ("**Agreement**") is entered into by and between CATHEDRAL CITY, a California charter city and municipal corporation, acting solely in its role as the Successor Housing Agency of the former Redevelopment Agency of the City of Cathedral City ("**Seller**"), and CATHEDRAL CANYON DEVELOPMENT, LLC, a California limited liability company ("**Buyer**"). Collectively, the parties may be referred to herein as the "**Parties**", or individually as a "**Party**." This Agreement is dated \_\_\_\_\_, 2017, for reference purposes only.

### **RECITALS**

A. Seller is the fee owner of certain unimproved real property located in the City of Cathedral City, California ("**City**"), which is described on the attached Exhibit A ("**Property**").

B. Seller is a California charter city and municipal corporation, acting solely in its role as the Successor Housing Agency of the former Redevelopment Agency of the City of Cathedral City.

C. The sale and development of the Property will further the housing purposes of Seller as the Successor to the Housing Agency by providing for a variety of needed additional housing within the core of Cathedral City's downtown.

D. As a condition to the sale of the Property and close of escrow, Seller requires that Buyer develop plans and specifications for the Property's development that are satisfactory to Seller and that Buyer and Seller enter into an agreement for such development, as more particularly described in this Agreement.

E. Seller now desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property on the terms and conditions set forth herein.

F. This Purchase and Sale and Escrow Instructions Agreement, and the related Performance Agreement, are intended by the Parties to, and due hereby, replace and supersede that certain Property Transfer Agreement and Escrow Instructions dated August 28, 2013, as amended, which was previously assigned to and assumed by Buyer by means of the Assignment, Assumption, and Consent Agreement dated November 30, 2016. Seller and Buyer have previously opened escrow for the conveyance of the Property and will utilize that escrow to consummate this transaction.

NOW, THEREFORE, the Parties agree to be bound by the promises, covenants and obligations contained in this Agreement, each of them acknowledging the sufficiency of the consideration given to it.

## **TERMS AND CONDITIONS**

### **Section 1. Incorporation of Recitals, Exhibits**

Each of the Recitals set forth above is incorporated in this Agreement and the Parties each acknowledge and agree to the truth and accuracy thereof. Each of the Exhibits attached hereto is included herein by reference.

### **Section 2. Purchase and Sale**

2.1 **Purchase Price.** Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, for the amount of Three Hundred Thirty One Thousand Dollars (\$331,000) ("**Purchase Price**") and upon all of the terms and conditions set forth in this Agreement. The Purchase Price shall be tendered by Buyer to Seller in immediate available funds at the Close of Escrow (as defined hereinafter).

2.2 **Deposit.** Buyer has previously made a deposit of the sum of Ten Thousand Dollars (\$10,000) ("**Deposit**") with the Escrow Agent. The Deposit shall be remitted to Buyer if Buyer is entitled to the return thereof pursuant to this Agreement or remitted to Seller as liquidated damages under Section 10.2 if Buyer defaults under the terms of this Agreement.

2.3 **Independent Consideration.** One Hundred Dollars (\$100) of the Deposit shall be paid to Seller as independent consideration for Seller entering into this Agreement (the "**Independent Consideration**") and shall be retained by Seller in all instances.

2.4 At the Closing, Buyer shall pay the Purchase Price in cash or cash equivalent, less the Deposit.

### **Section 3. Due Diligence Period/Right of Entry**

#### **3.1 Due Diligence Period.**

For the first ninety (90) days following the Effective Date as defined below in Section 14.18 ("**Due Diligence Period**"), Buyer shall have the right to review and approve or disapprove the physical condition of the Property, matters affecting title to the Property, financial investigations, zoning and land use restrictions, and all other matters that Buyer determines are relevant to its purchase and development of the Property. Buyer's obligations to close Escrow and acquire the Property are conditioned upon Buyer's approval (or deemed approval) of such matters, in its sole and absolute discretion. If Buyer approves of such matters, Buyer will provide written notice of such approval to Seller ("**Approval Notice**") prior to expiration of the Due Diligence Period. If Buyer provides Seller written notice disapproving of such matters ("**Disapproval Notice**") prior to the expiration of the Due Diligence Period, the Deposit shall be returned to Buyer and thereafter this Agreement shall terminate and neither Party shall have any further rights or obligations hereunder except as provided by Section 13. The

failure of Buyer to provide an Approval Notice or Disapproval Notice on or before the expiration of the Due Diligence Period will be deemed to be approval by Buyer, in which event this Agreement will continue in full force and effect.

### 3.2 Right of Entry.

At any time during the Due Diligence Period, upon forty-eight (48) hours prior written notice to Seller, and at Buyer's sole expense, Buyer and its authorized agents shall have the right to enter upon the Property during normal business days and hours for any lawful purpose, including, without limitation, making such surveys and site analyses, test borings and engineering studies as Buyer may deem necessary; provided, however, Buyer shall not conduct any invasive testing unless approved by Seller in writing, in Seller's sole but reasonable discretion. Buyer will defend, indemnify and hold Seller and the Property harmless from and against any and all claims and liens arising out of any act or failure to act of Buyer or its authorized agents as a result of their respective activities on the Property. Before entering the Property, Buyer (or its agents entering onto the Property) shall obtain and furnish to Seller an endorsement showing that Buyer (or such agent entering the Property) maintains commercial general liability insurance with a reputable insurer admitted in California, with a Best's rating of A or better, providing minimum limits of liability of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, and naming Seller as additional insured. Such endorsement must expressly provide that such insurance may not be canceled or reduced in scope or coverage without at least thirty (30) days' prior written notice to Seller.

### Section 4. Title

Seller shall convey fee title to the Property to Buyer grant deed ("**Grant Deed**") at the Close of Escrow, free of any monetary or other interests or encumbrances affecting the condition of title except as otherwise permitted in Section 5.2 below or created by Buyer or its agents. Seller shall provide Buyer with an Owner's ALTA Standard Coverage Policy of Title Insurance ("**Policy**") in a policy amount equal to the Purchase Price, issued by First American Title Insurance Company, 74-770 Highway 111, Suite 101, Indian Wells, California 92210 ("**Title Company**"), Attn: Sharon Elkins ("**Escrow Agent**"), showing title vested in Buyer in the condition required by this Agreement.

### Section 5. Conditions to Close of Escrow

The Close of Escrow shall be subject to the satisfaction of the conditions set forth in this Section 5 and elsewhere in this Agreement. If any of these conditions are not satisfied within the time periods provided in this Agreement, the Party to be benefited by that condition may, at its sole option and discretion, either waive such condition(s) in writing or terminate this Agreement by delivering written notice of termination to the other Party and Escrow Agent. Upon such termination, the Parties will be relieved of any and all obligations under this Agreement except as provided in Section 13 and the Deposit will be returned to Buyer.

## 5.1 Closing Date

Escrow shall close ("**Close of Escrow**"), as evidenced by the recordation of the Grant Deed in the official records of Riverside County, California, as soon as the conditions to Close of Escrow have been met or waived in writing by the Party for whose benefit the condition exists, but in no event later than March 30, 2018 ("**Closing Date**"), except that Buyer may extend the Closing Date by six (6) months to September 30, 2018 ("**Outside Closing Date**"), upon depositing into Escrow the amount of One Hundred Sixty Five Thousand Five Hundred Dollars (\$165,500), which amount shall be made a part of the Deposit. For purpose of clarification, no event of force majeure, cure period, or other intervening event may extend the Close of Escrow past the Outside Closing Date without the written agreement of the Parties, given or withheld in their sole and absolute discretion.

## 5.2 Approval of Title to the Property

5.2.1 Title to the Property shall be in the condition required by this Agreement as of the Close of Escrow. At the Close of Escrow, the Policy shall show as exceptions only the following: (a) the Title Company's standard printed exceptions; (b) general and special real property taxes and assessments, if any, for the current fiscal year, a lien not yet due and payable; (c) any exceptions approved or deemed approved by Buyer under Section 5.2.2; and (d) any other exception consented to in writing by Buyer or created by Buyer or its agents. Buyer agrees to assume the continuing obligation to pay any public assessment or facilities district charges which may be in place on the Property and that the existence of such assessments or charges shall not be a cause for Buyer to object. All of the items listed in clauses (a) through (d), inclusive, of this paragraph 5.2.1 shall be permitted exceptions to title ("**Permitted Exceptions**").

5.2.2 No later than five (5) calendar days after the Opening of Escrow (as defined in Section 6.2), the Title Company shall provide the Buyer with a preliminary title report ("**Title Report**") for each parcel of land contained in the Property, together with complete and legible copies of all instruments referred to in the Title Report as conditions or exceptions to title. No later than thirty (30) days prior to the expiration of the Due Diligence Period, Buyer must provide written notice ("**Title Objection Notice**") to Seller identifying and exceptions identified in the Title Report to which Buyer objects, other than Permitted Exceptions. If Buyer fails to timely provide a Title Objection Notice, then Buyer will be deemed to have approved of all matters shown as exceptions in the Title Report. If Buyer timely delivers a Title Objection Notice, then, within ten (10) days after its receipt of the Title Objection Notice, Seller must provide written notice ("**Seller's Title Response**") that Seller either: (a) will cause the removal of said exceptions on or before the Close of Escrow; or (b) is unable or unwilling to remove the exception. In the event Seller is unable or unwilling to cause any exception to be removed on or before the Close of Escrow, Buyer shall have the right for five (5) days after its receipt of Seller's Title Response to terminate this Agreement. Upon such termination, the Parties shall be relieved of any and all obligations under this Agreement except as provided by Section 13 and the Deposit will be returned to Buyer.

### 5.3 Performance Agreement

5.3.1 As a condition to the Close of Escrow, Buyer, Seller, and City Urban Revitalization Corporation ("**CURC**"), must negotiate and execute a mutually acceptable agreement ("**Performance Agreement**") that provides, among other things: (a) a description of the proposed project to be developed upon the Property, and agreed to by Buyer, Seller, and CURC ("**Project**"), subject to the City's entitlement process, (b) time requirements for Buyer's processing of entitlements and development of the Project, including, without limitation, completion of construction of the Project within eighteen (18) months following the Close of Escrow, and (c) Buyer's continuing post-closing obligations with respect to the Project. The Parties will, commencing upon the start of the Due Diligence Period, attempt in good faith to negotiate with each other and the CURC's representatives a mutually agreeable form of Performance Agreement.

5.3.2 If the Parties are unable to mutually agree on a form of Performance Agreement within sixty (60) days following the expiration of the Due Diligence Period ("**Performance Agreement Period**"), then either Party may terminate this Agreement and, upon such termination, the Deposit will be returned to Buyer and neither Party will have any further rights or obligations hereunder, except as otherwise provided by Section 13. If the Parties agree on the form of Performance Agreement during the Performance Agreement Period, then Seller will, within five (5) days following the execution of the Performance Agreement by Buyer, Seller and CURC, deliver one fully-executed copy of the Performance Agreement to Escrow Agent, Buyer and CURC.

5.3.3. Nothing in this Agreement is a representation or warranty that either Seller's Board or CURC's governing body will approve any form of Performance Agreement presented to them. Neither Seller nor CURC will be bound by the Performance Agreement until it has been approved by both Seller's Board and CURC's governing body, following all legally required procedures and acting within the limits of the discretion granted to them by law. Any decision to not approve the Performance Agreement by either Seller's Board or CURC's governing body, for any reason or no reason at all, will not constitute a default under this Agreement or grant Buyer any right or remedy other than to terminate this Agreement and receive a refund of the Deposit as provided in Section 5.3.2.

### 5.4 Seller's Approval of Buyer's Financing

Prior to the expiration of the Due Diligence Period, Buyer shall provide evidence satisfactory to Seller that it possesses funds, or loan commitment(s) reasonably acceptable and verifiable to Seller, sufficient to purchase the Property. Prior to the Close of Escrow, Buyer shall provide evidence satisfactory to Seller that it possesses funds, or loan commitment(s) reasonably acceptable and verifiable to Seller, sufficient to develop the entirety of the Project as approved by Seller and as described in the Performance Agreement.

## 5.5 Seller Deposits

Prior to the Close of Escrow, Seller shall have deposited in Escrow all documents required by this Agreement or Escrow Agent's standard escrow instructions, including, without limitation, a duly executed and acknowledged Grant Deed, counterpart originals of the Performance Agreement as required by Section 5.3.2, and any other required documents.

## 5.6 Buyer Deposits

Prior to the Close of Escrow, Buyer shall have deposited in Escrow all documents required by this Agreement or Escrow Agent's standard escrow instructions, including, without limitation, counterpart originals of the Performance Agreement as required by Section 5.3.2, any other required documents, and all funds required by this Agreement, including, without limitation, the Deposit, the Purchase Price and such other sums as are debited to Buyer through escrow.

## Section 6. Escrow Provisions and Instructions

### 6.1 Escrow Agent

The Parties have previously established an escrow (the "**Escrow**") with the Escrow Agent for the purposes of implementing the transaction described in this Agreement.

### 6.2 Opening of Escrow

Within three (3) days after the Effective Date, Buyer and Seller shall each deposit with Escrow Agent one fully-executed counterpart of this Agreement. The date of delivery to Escrow Agent of such fully-executed counterparts shall be deemed the opening of escrow ("**Opening of Escrow**"), even though the Parties have previously opened escrow, and Escrow Agent shall notify Buyer and Seller in writing of the Opening of Escrow date. The Escrow Agent is hereby empowered to act under this Agreement upon indicating its acceptance of this Section 6.2 in writing, delivered to the Parties within five (5) calendar days after the Opening of Escrow, and shall thereafter carry out its duties as the Escrow Agent hereunder. In the event of any inconsistency between any supplemental escrow instructions required by Escrow Agent and this Agreement, this Agreement shall control, notwithstanding the fact that either Party may have intentionally or inadvertently executed such inconsistent instructions.

### 6.3 Additional Documents

Each Party shall deliver to the Escrow Agent, executed and acknowledged where applicable, any additional documents necessary for the conveyance of title as applicable or implementation of any other provision of this Agreement or other obligations of said Party hereunder, including, as applicable, any funds owed by that Party under this Agreement. The Parties will act in good faith to attempt to have all

necessary documents, consents, approvals, or other required documents delivered to the Escrow Agent. However, in no event shall said additional documents increase the rights of one Party against the other Party or modify the terms and conditions of this Agreement.

#### 6.4 Closing Statement

Not less than five (5) calendar days prior to the Close of Escrow, the Escrow Agent shall provide each Party with a closing statement, showing any funds owed by or any credits to that Party, based on allocations as are normal in the County of Riverside, unless otherwise provided by this Agreement. Ad valorem property taxes, assessments and fees will be apportioned as necessary to the transferee and the transferor in each transaction based on the Closing Date. The Escrow Agent shall concurrently provide copies of each Party's closing statement to the other Party.

#### 6.5 Delivery of Documents and Funds

Seller shall deliver the Grant Deed and any additional documents required from Seller at least three (3) days prior to the Close of Escrow. Buyer shall deliver the balance of the Purchase Price and any additional funds and any additional documents required to close Escrow to Escrow Agent at least three (3) days prior to the Close of Escrow.

#### 6.6 Close of Escrow

When the Escrow Agent is in a position to close the Escrow, it shall do the following in the order listed:

- (1) Record the Grant Deed.
- (2) Provide each Party and the Agency with a collated fully-executed Performance Agreement.
- (3) Deliver or cause the Title Company to deliver the Policy to Buyer.
- (4) Pay to the Party entitled thereto any funds held by the Escrow Agent which are due to that Party.
- (5) Provide each Party with a final closing statement and provide the other Party with a copy of said closing statement.
- (6) Provide each Party with a copy of all documents recorded with the County Recorder.

#### 6.7 Escrow and Sales Costs

Buyer and Seller shall equally pay all costs and expenses incurred in connection with closing Escrow, including, without limitation, the escrow fee. Seller

shall pay the cost of the Standard Coverage portion of the Policy and Buyer shall pay the difference in the cost of any extended coverage requested by Buyer and the cost of any title endorsements requested by Buyer. Escrow Agent shall notify Buyer and Seller of the costs to be borne by each at least five (5) calendar days prior to the Close of Escrow.

#### 6.8 Prorations

Current real property taxes, bond and other assessments, and other obligations or fees shall be prorated at the Close of Escrow.

### Section 7. AS-IS; Release

#### 7.1 As-Is

Buyer, having had the opportunity to undertake full testing or review of the Property during the Due Diligence Period, expressly assumes the risk that the Property may contain or have defects or conditions that might prevent the intended use of the Property or cause unexpected expense in connection with preparing the Property for the intended use. This Agreement contains all of the terms and conditions agreed upon, it being understood that there are no outside representations or oral agreements. Buyer acknowledges that, except as expressly contained in this Agreement, (a) neither Seller nor anyone acting for or on behalf of Seller has made any representation, statement, warranty, or promise to Buyer concerning the physical aspects and condition of the Property, any dimensions or specifications of any of the Property, the feasibility, desirability, or convertibility of the Property into any particular use, or the projected income or expenses for the Property; (b) in entering into this Agreement, Buyer has not relied on any representation, statement, or warranty of Seller (except those expressly contained herein) or on the documentation provided by Seller to Buyer under this Agreement, or anyone acting for or on behalf of Seller, all of which are to be independently verified by Buyer; (c) Buyer is purchasing the Property based solely upon Buyer's own inspection and examination thereof; (d) that Buyer is purchasing the Property in its then "AS IS" physical condition and its then "AS IS" state without any representation, statement, or warranty of Seller (except those expressly contained herein); and (e) Buyer does hereby waive, and Seller does hereby disclaim, all warranties of any type or kind whatsoever with respect to the Property, including, by way of description, but not limitation, those of fitness for a particular purpose, merchantability, tenantability, habitability, and use, except for the representations and warranties of Seller set forth herein.

#### 7.2 Release and Indemnity

Buyer hereby releases Seller from any claim for any condition of the Property. To that end, Buyer will defend, indemnify, and hold Seller, and its officials, officers, employees, attorneys and agents harmless for all claims, demands, causes of action, penalties, expenses and liability of whatsoever kind or nature which may arise out of, because of, concerning, or incident to the condition of the Property, including all



court actions, costs and expenses and attorneys' fees (collectively, "**Damages**") relative to being made a party in any action, suit, arbitration or mediation initiated by Buyer, its officials, officers, employees, attorneys, agents, lenders or any other person or entity seeking Damages, including any person or entity to whom the Property or any part thereof is leased or conveyed.

### 7.3 Waiver of Civil Code Section 1542

In connection with the releases set forth in this Section 7, Buyer acknowledges that it has had the opportunity to consult with legal counsel concerning the provisions of California Civil Code Section 1542 and, based on those consultations, Buyer expressly waives the provisions of Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Buyer specifically waives any and all rights and benefits under Section 1542 and all other state or federal laws or decisional authority of similar impact as they relate to the Damages and acknowledge that this Agreement would not have been entered into without such waiver.

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Buyer's  
Initials

### Section 8. Representations and Warranties of Seller

The Seller hereby represents and warrants the matters set forth below to be true to the best of the Seller's actual knowledge as of the date hereof and as of the Closing.

8.1 The Seller is the sole owner of the Property. The Seller has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

8.2 Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Seller is a party or by which the Seller or the Property may be bound.

### Section 9. Representations and Warranties of Buyer

The Buyer hereby represents and warrants the matters set forth below to be true to the best of Buyer's knowledge as of the date hereof and as of the Closing.

9.1 The Buyer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

9.2 Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Buyer is a party or by which the Buyer may be bound.

9.3 Buyer is an experienced and sophisticated purchaser of property and Buyer is purchasing the Property in its current, "AS IS" condition subject to all faults except to the extent otherwise represented in this Agreement.

9.4 Buyer assumes the risk that there may be information about the Property that is unknown to either Seller or Buyer that would prompt Buyer to cancel its purchase of the Property if such information was known. Buyer acknowledges that Seller has no obligation to Buyer to investigate the Property and its condition but Seller's only obligation is to disclose matters that are known to Seller and that fall within the disclosure requirements imposed by this Agreement or under California law concerning the sale of vacant commercial property.

## Section 10. Defaults; Liquidated Damages

### 10.1 Default

Except as provided in Section 10.2, any non-defaulting Party may bring any action under law or equity to compel the defaulting Party to perform its obligations under this Agreement or to seek damages for the defaulting Party's default; provided, however that under no circumstances shall either Party be liable for consequential, special, or punitive damages, and the Parties hereby waive all rights to seek recovery of same.

### 10.2 Liquidated Damages

SELLER AND BUYER AGREE THAT THE DAMAGES SELLER WOULD SUFFER IF BUYER DEFAULTS ON ITS OBLIGATION TO CLOSE ESCROW AS PROVIDED IN THIS AGREEMENT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THE DEPOSIT REPRESENTS THE PARTIES' REASONABLE ESTIMATE OF SUCH DAMAGES, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO SELLER THAT REASONABLY COULD BE ANTICIPATED, AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY, IMPRACTICAL OR INCONVENIENT, AND PARTICULARLY IN VIEW OF THE FACT THAT SELLER IS

TAKING THE PROPERTY OFF THE MARKET, WHICH SELLER WOULD NOT DO BUT FOR BUYER'S AGREEMENT TO PURCHASE THE PROPERTY. ACCORDINGLY, IN THE EVENT BUYER DEFAULTS ON ITS OBLIGATION TO CLOSE ESCROW AS PROVIDED IN THIS AGREEMENT AND SO LONG AS SELLER IS NOT IN MATERIAL DEFAULT OF ANY OF ITS OBLIGATIONS HEREUNDER, SELLER SHALL RECEIVE AND RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. SAID SUM SHALL BE IN ADDITION TO ANY OTHER REMEDIES ALLOWED UNDER THIS AGREEMENT AND SHALL NOT BE DEEMED TO INCLUDE ANY ATTORNEYS' FEES THAT MAY BECOME DUE TO SELLER PURSUANT TO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. BY INITIALING THIS PROVISION, SELLER AND BUYER EACH CONFIRMS THE ACCURACY OF THE FOREGOING STATEMENTS, AND AFFIRMS ITS RESPECTIVE OBLIGATIONS UNDER THIS SECTION 10.2. THE FOREGOING SHALL NOT LIMIT SELLER'S REMEDIES WITH RESPECT TO BUYER'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER THAT UNDER NO CIRCUMSTANCES SHALL BUYER BE LIABLE TO SELLER FOR CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, AND SELLER HEREBY WAIVES ALL RIGHTS TO SEEK RECOVERY OF SAME.

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Buyer's  
Initials

\_\_\_\_\_  
Seller's  
Initials

## Section 11. Notice Provisions

### 11.1 Giving Notice

Any and all notices, demands or communications submitted by either Party to the other Party pursuant to or as required by this Agreement shall be proper if in writing and dispatched by messenger for immediate personal delivery, or by a nationally known overnight service (e.g. Federal Express) or by registered or certified United States mail, postage prepaid, return receipt requested, to the location designated below. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate as provided in this Section 11. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, on the day following dispatch by overnight service or two (2) calendar days after it is placed in the United States mail as heretofore provided.

### 11.2 Where to Give Notice

All notices, demands or communications to a Party shall be sent to:

To Buyer: Cathedral Canyon Development, LLC &  
GreenSpring Capital Inc.  
c/o \_\_\_\_\_  
2429 W. Coast Hwy, Suite #210  
Newport Beach, CA 92663

With a copy to: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Seller: City of Cathedral City  
Attn: City Manager  
68-700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

With copy to: **Burke, Williams & Sorensen, LLP**  
Attn: Eric S. Vail  
1600 Iowa Avenue – Suite 250  
Riverside, California 92507

#### Section 12. Brokerage Fees

Both Parties represent that no broker is involved in this Agreement and each Party agrees to defend and indemnify the other against brokerage or commission claims arising out of the indemnifying Party's actions.

#### Section 13. Indemnification

The defense, indemnification, and hold harmless provisions of this Agreement shall survive the Close of Escrow or termination for any reason of this Agreement for a period of five (5) years from the Close of Escrow or termination of this Agreement, as applicable.

#### Section 14. Miscellaneous Provisions

##### 14.1 Participation

Any action taken by a Party, including, but not limited to, the termination of this Agreement under the provisions hereof, shall be at the sole option of said Party and in its sole and absolute discretion, unless a different standard is otherwise specifically indicated. Each Party acknowledges that the other Party would not have entered into this Agreement in the absence of these covenants.

#### 14.2 Additional Documents

The Parties each agree to execute any additional documents, forms, notices, applications or other documents which Escrow Agent reasonably determines to be necessary to carry out the intent of this Agreement.

#### 14.3 Severability

The Parties agree that, should any provision, section, paragraph, sentence or word of this Agreement be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of legislation, the remaining provisions, sections, paragraphs, sentences and words of this Agreement shall remain in full force and effect and the Parties agree in good faith to immediately amend this Agreement in such a way as to provide alternative provisions, sections, paragraphs, sentences or words as to carry out the intent of this Agreement.

#### 14.4 No Transfers or Assignments

Neither of the Parties may, without prior written approval of the other Party, which approval may be given or withheld at the sole and absolute discretion of the approving Party, (a) assign or attempt to assign this Agreement or any right herein or (b) make any total or partial sale, transfer, conveyance, lease, leaseback, or assignment of the whole or any part of the Property prior to the Close of Escrow.

#### 14.5 Venue

Any legal action must be instituted in the Superior Court of the County of Riverside, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.

#### 14.6 Governing Law

The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to its conflicts of laws principles.

#### 14.7 Cumulative Remedies

Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any defaulting Party. A waiver of a requirement shall not constitute an ongoing waiver of that requirement in the future. Any waiver of a right must be in writing to be enforceable.

#### 14.8 No Consideration to any Third Party

Each of the Parties warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial or other consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Party. For the purposes of this paragraph, third parties shall include any elected official, officer, employee or agent of the City.

#### 14.9 No Personal Liability

No official, member, officer, employee, agent or attorney of any Party shall be personally liable to the any other Party, its members or principals, or any successor in interest, or any other party or person whatsoever, in the event of any default or breach by said Party for any amount which may become due to another Party or to its successors, or on any obligations under the terms of this Agreement, except for gross negligence or willful acts of such member, officer, employee or attorney, unless said person has entered into an express written agreement to be liable.

#### 14.10 Amendments by City Manager

The City Manager of Seller is authorized to sign on his or her own authority amendments to this Agreement which are of routine or technical nature, including extensions of time deadlines, except that the cumulative total of time extensions granted by the City Manager may not exceed one (1) year.

#### 14.11 Independent Legal Advice

Each Party represents and warrants the following: that it has carefully read this Agreement, and in signing this Agreement and agreeing to be bound by the same, it has received independent legal advice from legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and it has freely signed this Agreement and agreed to be bound by it without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its officers, agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. This Agreement shall be interpreted as though prepared jointly and severally by both of the Parties.

#### 14.12 Costs and Attorneys' Fees

If either Party hereto files any action or brings any action or proceeding against the other arising out of this Agreement, seeks the resolution of disputes, or is made a party to any action or proceeding brought by a third party with respect to the Agreement, the Project or the participation in either by either Party, then as between the Parties, the prevailing Party shall be entitled to recover as an element of its costs of suit

or resolution of disputes, and not as damages, its reasonable attorneys' fees as fixed by the Court or other forum for resolution of disputes as may be agreed upon by the Parties in such action or proceeding or in a separate action or proceeding brought to recover such attorneys' fees.

#### 14.13 Successors

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and permitted successors and assigns.

#### 14.14 Time Frames

Unless otherwise indicated with respect to a requirement, all time frames for performance of an act required or permitted by this Agreement shall be calendar days. Time frames measured in months shall be calculated with reference to the actual number of days in the relevant months. Annual time frames shall mean a period of 365 days.

#### 14.15 Counterparts

This Agreement constitutes the entire understanding and agreement of the Parties. The Parties may sign this Agreement in counterparts. Faxed or electronically submitted signature pages shall bind a Party as if the other Party had received original signatures.

#### 14.16 Integration

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

#### 14.17 Waivers; Amendments

All waivers of the provisions of this Agreement and all amendments hereto must be in writing and signed by the appropriate representatives of the Party making the waiver. Except as otherwise provided in this Agreement, any amendment to this Agreement must be approved by Seller's City Council.

#### 14.18 Effective Date

The "**Effective Date**" of this Agreement is the date upon which it has been approved by Seller's Board of Directors and executed by the authorized signatories of each of the Parties.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

WHEREFORE, the Parties, intending to be bound hereby, have affixed their authorized signatures to this Agreement.

SELLER:

BUYER:

CITY OF CATHEDRAL CITY, a California  
municipal corporation

CATHEDRAL CANYON DEVELOPMENT,  
LLC, a California limited liability company

By: \_\_\_\_\_  
Charles P. McClendon,  
City Manager

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Managing Member

Date: \_\_\_\_\_, 2017

ATTEST:

By: \_\_\_\_\_  
Tracey Martinez, City Clerk

Date: \_\_\_\_\_, 2017

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Eric S. Vail, City Attorney

Date: \_\_\_\_\_, 2017



EXHIBIT A

PROPERTY

In the City of Cathedral City, County of Riverside, State of California:

Lots 127 through 131, inclusive, together with Lots 142 through 147, inclusive of Cathedral City, as per map filed in Book 13, at Pages 24 through 26, inclusive, of Maps, Records of said Riverside County.

Together with any underlying fee interest in that portion of Grove Street, shown as Lot "II" on said map, abutting said lots.

Containing 1.722 acres gross, or 1.998 acres gross including the abutting portion of Grove Street.

(Assessor Parcels 687-196-001 through 006, and 687-198-001 through 006)

EXHIBIT A